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FM AMEMBASSY KINGSTON
TO RUEHC/SECSTATE WASHDC 4750
INFO RUEHDG/AMEMBASSY SANTO DOMINGO 5820
RUEATRS/DEPT OF TREASURY WASHDC
RUEAWJA/DEPT OF JUSTICE WASHDC

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STATE FOR INL/LP BROWN, BOZZOLO, WHA/CAR FOR BUDDEN
TREASURY FOR CORREA
JUSTICE FOR LIPMAN
SANTO DOMINGO FOR LGATT

E.O. 12958: N/A

TAGS: SNAR EFIN PREL JM
SUBJECT: JAMAICA: NEW PROCEEDS OF CRIME ACT TO GO INTO
EFFECT ON MAY 15; NOT A SINGLE JAMAICAN GOVERNMENTAL
ORGANIZATION IS READY.

REF: KINGSTON 588

This is an Action Request, INL/LP, WHA/CAR please see para 11.

¶11. (SBU) Summary: On May 8, as promised, (reftel), Minister of National Security, Peter Phillips, moved the new Proceeds of Crime Act (POCA) through its final parliamentary approval and announced that the legislation will go into effect on May 15. With POCA's enactment, for the first time, the Government of Jamaica will have the power of civil forfeiture at its disposal. From May 8 - 11, NAS Director and a U.S. Department of the Treasury Liaison met with Jamaican officials charged with enforcing the POCA. The good news is that all are agreed that the first cases to proceed through need to be in effect, "slam dunks," as everyone anticipates strong legal challenges from criminal organizations trying to protect their assets. The bad news is that not a single Jamaican organization charged with the POCA's enforcement will be ready to go on May 15. NAS, in close collaboration with the U.S. Department of the Treasury and the UK High Commission, is in the process of designing a training program for summer 2007 to flatten the learning curve. End Summary.

Background on Legislation

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¶12. (SBU) The POCA consolidates all previous Jamaican legislation that dealt with money laundering and asset forfeiture. The initial legislation passed Parliament January 23. On May 8, the acts implementing regulations were passed and its effective date was set for May 15. Under the POCA, for the first time, the Government of Jamaica will have the power of civil forfeiture. The POCA covers commercial banks, merchant banks, mortgage companies (called building societies), exchange bureaus, securities dealers, remittance agencies and money transfer agencies. The POCA requires that the GOJ establish an Assets Recovery Agency (ARA) to manage and dispose of seized and forfeited assets; the ARA will be housed in the Financial Crimes Investigative Division (FID).

Fierce Legal Challenges Expected

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¶13. (SBU) In discussing the new legislation, GOJ officials have uniformly expressed a desire to ensure that the initial cases brought to the courts, particularly civil forfeiture cases, are rock solid. The FID and the Office of the Public Prosecutor, both anticipate extensive litigation over the

POCA's constitutionality, the definition of a "criminal lifestyle" (predicate for forfeiture), and any asset freeze orders issued prior to seizure. Both offices want to ensure that the first few cases are clear winners. The head of the FID told us that she will not take any cases under the new POCA to court until she knows they are air tight. As a consequence, during its first year, certain POCA cases are likely to be placed on hold or simply dropped by FID if they are not deemed strong enough.

Preparations by GOJ to Enforce POCA

¶4. (SBU) During the week of May 7, NAS Director and a Liaison Officer from the U.S. Department of Treasury's Office of Technical Assistance, met with representatives from the Office of the Public Prosecutor (DPP), the Jamaica Constabulary Force's Organized Crime/Financial Crimes Division (JCF/FID), the Ministry of Finance's Financial Investigative Division (FID), and the Tax Administration Directorate (TAAD) to discuss GOJ preparations for the POCA's implementation and discover where the USG could be of assistance. Unsurprisingly, none of the Jamaican organizations involved have made anything more than cursory plans to implement the POCA. Indeed it seems that Minister Phillips' announcement of the May 15 effective date, took most offices by surprise.

Current state of GOJ entities

Financial Investigative Division

¶5. (SBU) In the past few years, the FID has received

extensive mentoring from the U.S. Department of Treasury's Office of Technical Assistance, and the U.S. Department of Justice, and it has also gotten considerable financial support from NAS Kingston, the UK High Commission and the Canadian High Commission. It is the most prepared of all the Jamaican entities involved with POCA enforcement. That said, on May 15, the FID will have neither the structure nor staff in place to implement POCA's new provisions. From April 16 - 21, with the sponsorship of the British Government, the management of Jamaica's Financial Investigative Division (FID) was in the UK and Ireland for site visits to those nations' asset recovery agencies (ARA) to determine which model it will adopt for its new POCA-mandated ARA. The FID is still designing the ARA's structure, but its management informed us that it will likely adopt the Irish model. On May 4, the FID received verbal approval for the new positions it needs from the Ministers of Finance and National Security - attorneys, asset managers, administrative support staff - but still has yet to prepare its budget and position descriptions to Cabinet for approval before it can begin to recruit the necessary personnel. The head of the FID confided that she will have to raid other government entities to fill FID's new positions, as the talent pool of qualified candidates is quite small.

Tax Administrative Directorate

¶6. (SBU) The Tax Directorate (TAAD) has thus far been a reluctant partner with the FID on financial crimes cases. However, it has now agreed in writing to transfer the necessary personnel from its staff to FID to help prepare criminal tax assessments for prosecution. This will enable parallel criminal cases, both for financial crimes and criminal tax evasion and should increase the GOJ's asset recovery. Because of its past reluctance to work with FID and its failure to take advantage of past training and mentoring opportunities, TAAD staff, particularly its attorneys, need basic financial crimes training. The Director General of TAAD has assured us that she will support training for her staff. Due to a misunderstanding of their

roles and mistrust between FID and TAAD investigators, cooperation between these two organizations has been rather ad hoc. Going forward to avoid future misunderstandings, the TAAD Director would like to have a handbook detailing how cases are to be handled and delineating the areas of responsibility between the different offices.

Office of the Public Prosecutor

¶ 17. (SBU) Under the POCA, the Office of the Public Prosecutor along with the FID has the authority to bring asset freeze and forfeiture orders before the court. The Office suffered a massive staff turnover in 2006, losing almost half of its attorneys to private practice. With just slightly over 50 prosecutors for the entire island, the Office is understaffed to handle its current case load. The Director has designated seven of his prosecutors, three full time, four as back ups, to handle all financial crime cases, including Mutual Legal Assistance Treaty requests. None of the attorneys have had any comprehensive training in how to read/analyze financial statements, and the prosecutor we met with informed us that the often voluminous and disorganized financial crimes' case files she receives often sit for up to a year essentially untouched because of her inability to access the critical information needed for prosecution. Coordination between the Public Prosecutor's Office, the Jamaica Constabulary Force and FID is ad hoc as there is no handbook of best practices to help guide officers in case preparation.

JCF/FID

¶ 18. (SBU) No one, not even the soon to be new head of the Jamaica Constabulary Force's Financial Crimes Division, is completely sure where this group's investigative responsibility ends and FID's begins. The standard line is that the JCF/FID will handle "small" cases and the FID will handle the complex ones. FID will act as the clearing house and will determine whether the case would be appropriate for the JCF/FID. There is a real need for a handbook or MOU

between these two organizations to map out their investigative parameters. The JCF/FID officers need "soup to nuts" training, from basic accounting principles, "books and records," interview techniques, and more sophisticated "follow the money" courses. During the week of May 14, a select group of officers from the JCF, not necessarily the right ones, will receive a three-hour lecture from the FID and DPP's office on the POCA. According to one of the prosecutors who will provide the training, "little will be retained due to the classes tornado-like approach to the subject." The JCF/FID officers are eager for training on investigative techniques using internet searches, but of course, as there is only one computer in the whole division and it is not hooked up to the internet, that training program will have to wait.

Judiciary

¶ 19. (SBU) The judiciary is extremely prickly and they do not want to have training, on any topic. Everyone we met with agreed that it is critical for the judges to receive basic training not only on the POCA's contents but also, on "what financial crimes case prosecutions actually look like." The Ministry of National Security (MNS) and Office of the Public Prosecutor warned us (U.S., UK) against directly approaching the judiciary. To facilitate the training, the MNS agreed to speak with Ministry of Justice to develop a continuing education course for the judiciary through its own Justice Training Institute, that we would then quietly fund. Both the U.S. and UK independently identified the same UK expert as the ideal candidate, a Justice Kennedy.

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¶10. (SBU) Based on our meetings, NAS and the OTA Liaison have identified the following training needs: basic finance and accounting, "follow the money," interview techniques for financial investigations, report writing, case file preparation, and the development of handbook of best practices to be used by FID/TAAD/JCF/DPP.

Training Plan

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¶11. (SBU) The UK has committed to provide advanced training and mentoring for the FID through its ARA's Center of Excellence on asset recovery and asset management. We (U.S./UK) have already agreed that we should not duplicate efforts. In addition to capacity building, any training program needs to pull together FID/TAAD/JCF/DPP staff to break down the barriers that exist between these organizations. In addition, a lesson learned from previous training indicates that the training needs to be held at an off-site location, ideally out of Kingston, to prevent interruptions to the training by the officers' superiors. As some officers have previously handled cases, we would run intensive sessions at the beginning to bring the neophytes up to the level necessary to join the more experienced investigators. Mid-way we would then mix the training groups together for the more advanced courses such as "follow the money" and "case file preparation" to provide an opportunity for team building across government agencies. Concurrently, we would ask managers from the organization involved in the training to work with U.S. and UK mentors to develop a draft handbook of best practices, which would then be distributed to the larger group for comment, amendment and final approval. It is estimated that the funding needed for the two-week long, off-site course would be USD \$100,000. In its FY2007 budget, NAS-Kingston allocated USD \$25,000 for the funding of POCA related courses. NAS-Kingston will work with its UK partner to determine what assistance may be available, however given its commitments to fund assistance for the ARA, we are doubtful that there will be any additional funds at the High Commission's disposal. Post therefore requests WHA/CAR and INL/LP's assistance to secure the funding to cover the remainder of the cost of the program.

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